

REMARKS

Applicants note that Karp U.S. Patent No. 4,957,400 (hereinafter also referred to as "Karp") discussed in paragraph 9 of the Office Action is not listed on the "Notice of References Cited." Applicants respectfully request that the reference be officially listed in order that submission of a copy of the "Notice of References Cited" in other related applications, cites all references considered in the prosecution of this application.

Claims 2, 4, 6 – 25 and 28 – 48 are in the instant application of which claims 4 and 21 are allowed; claims 7, 9, 11, 13, 15, 16, 22, 23, 29 – 31, 33, 34, 36 – 39, 41, 42, 44, 45, 47 and 48 are amended to more positively recite applicants' patentably novel invention, and claims 2, 6, 14, 28 and 40 are canceled without prejudice to reduce the issues. Claims 49 – 53 are added to set forth applicants' patentably novel invention in varying scope.

Claims 7 – 13, 31 – 38 and 42 – 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The Office Action alleges that claims 7, 11, 31, 42 and 45, each contain improper Markush language. Applicants respectfully traverse the rejection of claims 7 – 13, 31 – 38 and 42 – 48 under 35 U.S.C. 112, second paragraph, however, to reduce the issues, claims 7, 11, 31, 42 and 45 are amended to, among other things, recite "at least one material selected from cork, rubber, foamed polymeric materials and non-foamed polymeric materials."

Support for the amendments to claims 7, 11, 31, 42 and 45 is found, among other places, in the claims on file. Based on the foregoing, applicants respectfully request admittance of the discussed amendment to claims 7, 11, 31, 42 and 45, and withdrawal of the rejection of claims 7 – 13, 31 – 38 and 42 – 48 under 35 U.S.C. 112, second paragraph.

Claims 30 – 38 are objected to. The Office Action alleges that in Claim 30, line 2, the phrase "is secured" should be deleted to avoid grammatical errors. Applicants respectfully traverse the objection to claim 30, however, to eliminate this issue, claim 30 is amended to recite, among other things, "an adhesive secures the layer to the plastic member." Support for the amendment to claim 30 is found, among other places, in claim 30. Based on

the foregoing, applicants respectfully request admittance of the amendment to claim 30, and withdrawal of the objection to claims 30 – 38.

Claims 42 and 45, and claims 44, 47 and 48 are amended to, among other things, be dependent on, and/or be consistent with, allowed claim 4; claims 42 – 48 are now directly or indirectly dependent on claim 4. Support for the amendments to claims 42, 44, 45, 47 and 48 is found, among other places, in the claims on file. Based on the foregoing, applicants respectfully request admittance of the amendments to claims 42, 44, 45, 47 and 48 discussed above, continued allowance of claim 4 and allowance of claims 42 – 48.

Claims 31, 33, 34 and 36 – 38 are amended to, among other things, be dependent on, and/or be consistent with, allowed claim 21; claims 31 – 38 are now directly or indirectly dependent on claim 21. Support for the amendments to claims 31, 33, 34 and 36 – 38 is found, among other places, in the claims on file. Based on the foregoing, applicants respectfully request admittance of the amendments to claims 31, 33, 34 and 36 – 38 discussed above, continued allowance of claim 21, and allowance of claims 31 – 38.

Claims 2, 6, 7, 11, 14 and 28 – 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Millar, Jr. U.S. Patent No. 4,812,093, (hereinafter also referred to as “Millar”). Applicants respectfully traverse the rejection of claims 2, 6, 7, 11, 14 and 28 – 31 under 35 U.S.C. 102(b) as being anticipated by Millar, however to reduce the issues, (1) claims 2, 6, 14 and 28 are canceled without prejudice; (2) claim 31 as discussed above is dependent on allowed claim 21; (3) claims 7, 11 and 29 are amended to be dependent on and consistent with new claim 49, and (4) claim 30 is indirectly dependent on new claim 49.

Claim 49 relates to a packaging restraint, including, among other things, an abrasive resistant plastic member having a first leg joined to a second leg at a vertex to provide the member with a generally L-shaped cross sectional configuration, the member having an inner surface and an outer surface, the inner surface of the member designated to be in facing relationship to articles to be restrained. A layer of a compressible resilient material is secured to the inner surface of the member at the vertex, and extends from the vertex toward end of the first leg and extends from the

vertex toward end of the second leg. An attachment is provided on the outer surface of the member.

Support for the amendments to claims 7, 11 and 29, and for new claim 49 is found, among other places, in the claims on file and in the drawings. Based on the foregoing, applicants respectfully request admittance of the amendments to claims 7, 11 and 29, and new claim 49, and consideration of claims 49, 7, 11, 29 and 30.

Miller discloses an L-shaped member made of steel having a pad only on one leg of the L-shaped member. Claim 49 recites that the L-shaped member is made of plastic and has a pad on each of the legs. Based on the foregoing, applicants respectfully submit that Millar does not anticipate applicants' packaging restraint recited in claims 49, 7, 11, 29 and 30.

Based on the foregoing, applicants respectfully request withdrawal of the rejection of claims 7, 11, 29 and 30 under 35 U.S.C. 102(b) as being anticipated by Millar.

Claims 39 – 42 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Millar. Applicants respectfully traverse the rejection of claims 39 – 42 and 45 under 35 U.S.C. 103(a) as being unpatentable over Millar, however to reduce the issues, (1) claim 40 is canceled without prejudice; (2) claims 42 and 45 as discussed above are dependent on allowed claim 4, and (3) claims 39 and 41 are amended to be consistent with new claim 49.

Support for the amendments to claims 39 and 41 is found, among other places, in claims on file. Based on the foregoing, applicants respectfully request admittance of the amendments to, and consideration of, claims 39 and 41.

Claim 49 and Millar were discussed above.

Applicants respectfully submit that the allegations in the Office Action to support the rejection of claims 39 and 41 under 35 U.S.C. 103(a) as being unpatentable over Millar are not supported by the disclosure of Millar. More particularly, the foam rubber 32 of Millar is attached to a plate 24 and biased against sidewall 52 of the truck bed (see Fig. 4 of Millar). The bolt 48 does not secure the foam 32 to the plate 24; the foam rubber is secured to the plate 24 by an adhesive (see column 2, lines 24 – 32 of Millar). Further, the bolt 48

does not secure the foam rubber to the L-shaped member but to the sidewall 52 of the truck.

In the event the Office Action is arguing that the foam rubber 32 is attached to a leg of the steel L-shaped member by the bolt passing through the plate 24 and threaded in the hole of the L-shaped member, it is noted that the foam rubber would be on the outer surface of the L-shaped member, and the foam rubber 30 would be on the inner surface of the L-shaped member. Claim 49 on which claims 39 and 41 are dependent recites, among other things, that that the packing restraint includes, among other things, a plastic member having a generally L-shaped cross sectional configuration, a layer of a compressible resilient material secured to the inner surface of the member at the vertex and extending from the vertex toward end of the first leg of the plastic member and from the vertex toward end of the second leg of the plastic member. The L-shaped member of Miller is made of steel and teaches away from each of the legs of the L-shaped member having a compressible resilient material. More particularly, Millar in Figs. 3 and 4 shows that the inner surface of the L-shaped member does not contact any surface. Therefore there would be no teaching to one skilled in the art to provide a layer of a compressible material on the inner surface of each of the legs of the L-shaped member.

Based on the foregoing, applicants respectfully request withdrawal of the rejection of claims 39 and 41 under 35 U.S.C. 103(a) as being unpatentable over Millar.

Claims 8 – 10, 32 – 34, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Millar as applied to claims 2, 31 and 42, further in view of Karp. Applicants respectfully traverse the rejection of claims 8 – 10, 32 – 34, 43 and 45 under 35 U.S.C. 103(a) as being unpatentable over Millar in view of Karp, however to reduce the issues, (1) claims 32 - 34 as discussed above are dependent on allowed claim 21, (2) claims 43 and 44 as discussed above are dependent on allowed claim 4, (3) claims 8 and 9 are amended to be dependent on and/or be consistent with new claim 49, and (4) claims 8 – 10 are directly or indirectly dependent on new claim 49.

Support for the amendment to claims 8 and 9 is found, among other places, in the claims on file. Based on the foregoing, applicants respectfully

request admittance of the amendment to claims 8 and 9 and consideration of claims 49 and 8 – 10.

Claim 49 and Millar were discussed above.

The Office Action alleges that it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the polyethylene foam of Millar for the rubber foam of Karp because these two foam materials have been shown in the art to recognized equivalent for a tough resilient foam of the protective pad.

Applicants respectfully submit that even if the allegation made in the Office Action has support in the disclosure of Millar and Karp, the combination would not disclose the packaging restraint of claim 49 on which claims 8 – 10 are dependent. More particularly, claim 49 relates to a packaging restraint, including, among other things, an abrasive resistant plastic member having a first leg joined to a second leg at a vertex to provide the member with a generally L-shaped cross sectional configuration, the member has an inner surface and an outer surface, the inner surface of the member designated to be in facing relationship to articles to be restrained. A layer of a compressible resilient material is secured to the inner surface of the member at the vertex and extends from the vertex toward the end of the first leg, and from the vertex toward the end of the second leg.

There is no disclosure in Millar and/or Karp of an L-shaped member having a layer of a compressible resilient material secured to the inner surface of the member at the vertex and extending from the vertex toward the end of the first leg, and from the vertex toward the end of the second leg, of the L-shaped member. Further there is no teaching in Millar and Karp of a foamed polyethylene formed under a pressure of 3 to 9 pounds per square inch (claim 10).

Based on the foregoing, applicants respectfully request withdrawal of the rejection of claims 8 – 10 under 35 U.S.C. 103(a) as being unpatentable over Millar in view of Karp.

Claims 2, 6, 7, 11 – 16, 19, 20, 23 – 25, 28 – 31, 39 – 42 and 45 – 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moehring U.S. Patent No. 3,938,660 (hereinafter also referred to as "Moehring") in view of Sauer et al. U.S. Patent No. 5,878,548 (hereinafter also referred to as

"Sauer"). Applicants respectfully traverse the rejection of claims 2, 6, 7, 11 – 16, 19, 20, 23 – 25, 28 – 31, 39 – 42 and 45 – 48 under 35 U.S.C. 103(a) as being unpatentable over Moehring in view of Sauer, however to reduce the issues, (1) claims 2, 6, 14, 28 and 40 are canceled without prejudice to reduce the issues, (2) claims 7, 11, 13, 15, 29, 30, 39 and 41 are amended to be dependent on, and/or consistent with, new claim 49, (3) independent claims 16 and 23 are amended to more positively recite the invention, and (4) claim 31 is amended as discussed above to be dependent on allowed claim 21.

Support for the amendment to claims 7, 11, 13, 15, 16, 23, 29, 30, 39 and 41 is found, among other places, in the claims on file. Based on the foregoing, applicants respectfully request admittance of the amendments to claims 7, 11, 13, 15, 16, 23, 29, 30, 39 and 41 and consideration of claims 7, 11 – 13, 15, 16, 19, 20, 23 – 25, 29, 30, 39 and 41. The claim arrangement has claims 7, 11 – 13, 15, 29, 31, 39 and 41 either directly or indirectly dependent on new claim 49; claims 19 and 20 dependent on amended independent claim 16, and claims 24 and 25 dependent on amended independent claim 23.

Claim 49 was discussed above.

Regarding claim 49 on which claims 7, 11 – 13, 15, 29, 31, 39 and 41 are dependent, claim 49 relates to a packaging restraint, including, among other things, an abrasive resistant plastic member having a first leg joined to a second leg at a vertex to provide the member with a generally L-shaped cross sectional configuration, the member having an inner surface and an outer surface, the inner surface of the member designated to be in facing relationship to articles to be restrained. A layer of a compressible resilient material is secured to the inner surface of the member at the vertex and extends from the vertex toward the end of the first leg and from the vertex toward the end of the second leg. An attachment is provided on the outer surface of the member.

Moehring discloses a pad 50 biased against a stack of glass sheets, the pad having the inner surface of the pad contacting the sheets and the opposite surface of the pad having a raised portion 52 at one end, and a raised portion 53 at the other end, to receive banding strap 41. Unlike Moehring that discloses a pad having the raised portions to receive the

banding contacting the glass sheets; applicants, claim 49 recites that the attachment for the banding is on the outer surface of an L-shaped plastic member and a compressible resilient material is on the inner surfaces of each of the legs of the L-shaped member to contact the articles, e.g. glass sheets being shipped. Further, in Moehring the banding passes through a linear runner 51 to bias the pad 50 against the sheets. In applicants' claim 49, the outer L-shaped member has the attachment to receive the banding.

Sauer discloses the use of a first plurality of spaced corner members on one side of a lumber stack and a second plurality of spaced corner members on the opposite side of the lumber stack. Banding engages the corner members and the support bed to secure the lumber stack on the support bed.

The Office Action alleges that it would have been obvious to one skilled in the art to make the pad and runner of Moehring integral. Applicants respectfully submit that making the pad and runner of Moehring integral would not disclose the packaging restraint of applicants' claim 49. More particularly, the restraint system of Moehring/Sauer would include an inner pad having raised portions 52 and 53 to receive the banding and the tubular linear runner 51 secured to the pad and extending from the raised portion 52 toward the front of the rack. There is no disclosure in Moehring and/or Sauer that the runner 51 would have an L-shape as recited in applicants' claim 49 for the abrasive resistant plastic member. More particularly, in the practice of Moehring, the tubular runner 51 is linear to extend across the top of the stacked sheets, and the pad 50 extends over the surface of the outermost sheet in order that the banding extending across the surface of the outermost sheet biases the sheets against the backwall of the rack. The banding across the top of the stacked sheets biases the runner 51 and pad 50 against the top of the stacked sheets to bias the sheets against the base of the rack. In this manner the stack of sheets are unitized as disclosed in the Abstract of Moehring. As can now be appreciated, the runner of Moehring to accomplish its desired purpose would be linear and would not have an L-shape as recited for the abrasive resistant plastic member in applicants' claim 49.

An artisan would not use an L-shaped runner having the pad 50 integral therewith in the practice of Moehring because such an arrangement

would not provide a unitized stack of sheets. More particularly, the biasing of the pad 53 against the surface of the outermost sheet would slide the pad and runner 50 across the top of the stacked sheets toward the backwall of the rack, as the banding biases the pad and runner against the top of the sheets. The co-action of the banding moving the sheets against the backwall of the rack as the sheets are moved toward the base would limit the movement of the pad and the runner which extends across the top of the sheets thereby not unitizing the stack of glass sheets.

Because the combination of Moehring and Sauer does not disclose an L-shaped member having a layer of compressible material as recited in applicants' claim 49, the combination cannot render the package restraint recited in claims 49 and the claims dependent thereon obvious.

Regarding claim 16 on which claims 19 and 20 are dependent, claim 16 recites a restraint for packaging glass sheets, the restraint includes, among other things, a unitary laminated member including, among other things, an outer layer having a first member and a second member defining a vertex, the outer layer having a major surface defined as a first major surface and an opposite major surface defined as a second major surface, the second major surface of the outer layer comprising major surfaces of the first and second members. A first leg has a major surface defined as an inner surface configured to contact at least a portion of the glass sheets and an opposite major surface defined as an outer surface, the outer surface of the first leg bonded with the second major surface of the first member of the outer layer. A second leg has a major surface defined as an inner surface of the second leg configured to contact at least a portion of the glass sheets and an opposite major surface defined as an outer surface of the second leg, the outer surface of the second leg bonded with the second major surface of the second member of the outer layer. The inner surfaces of the first and second legs each extend from the vertex of the outer layer along the second major surface of their respective member and include, among other things at least a partly compressible material, and the first major surface of the outer layer is comprised at least partly of a material having a hardness greater than that of the compressible material. An attachment member is formed on the first major surface of the outer layer.

The argument put forth to show the patentability of claim 49 over the disclosure of Moehring and Sauer is applicable, among others, to show patentability of claim 16 and the claims dependent thereon over the disclosure of Moehring and Sauer.

Regarding independent claim 23 on which claims 24 and 25 are dependent, claim 23 recites a shipping container including, among other things, a base; a plurality of articles carried on the base, the articles defining a unit having at least two opposed edges. At least one unitary L-shaped laminated restraint located along the two opposed edges, the restraint includes, among other things, an outer layer having a first member and a second member defining a vertex, the outer layer having a major surface defined as a first major surface and an opposite major surface defined as a second major surface, the second major surface of the outer layer comprising major surfaces of the first and second members. A first leg having a major surface defined as an inner surface configured to contact at least a portion of the articles and an opposite major surface defined as an outer surface, the outer surface of the first leg bonded with the second major surface of the first member of the outer layer, and a second leg having a major surface defined as an inner surface of the second leg configured to contact at least a portion of the articles and an opposite major surface defined as an outer surface of the second leg, the outer surface of the second leg bonded with the second major surface of the second member of the outer layer, wherein the first and second legs are in contact with one another at, and each extend from, the vertex and include, among other things, a compressible, resilient material and the outer layer includes, among other things, an abrasion-resistant material. An attachment member is provided on the first major surface of the outer layer, and a fastening member engages the attachment member to secure the articles in the container.

The argument put forth to show the patentability of claim 49 over the disclosure of Moehring and Sauer is applicable, among others, to show patentability of claim 23 and the claims dependent thereon over the disclosure of Moehring and Sauer.

Based on the foregoing, applicants respectfully request withdrawal of the rejection of claims 7, 11 – 16, 19, 20, 23 – 25, 29, 30, 39 and 41 under 35 U.S.C. 103(a) as being unpatentable over Moehring in view of Sauer.

Claims 8 – 10, 17, 18, 22, 32 – 38, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moehring in view of Sauer as applied to claims 2, 16, 31 and 42 above, and further in view of Maurice U.S. Patent No. 4,851,286 (hereinafter also referred to as "Maurice"). Applicants respectfully traverse the rejection of claims 8 – 10, 17, 18, 22, 32 – 38, 43 and 44 under 35 U.S.C. 103(a) as being unpatentable over Moehring in view of Sauer and further in view of Maurice, however to reduce the issues, (1) claim 9 is amended, and claims 8 – 10 are dependent on new claim 49 discussed above, (2) claims 17 and 18 are dependent on amended independent claim 16 discussed above, (3) claim 22 has been amended to more positively recite the patentably novel invention, (4) claims 32 – 38 are now dependent on allowed claim 21 as discussed above, and (5) claims 43 and 44 are dependent on allowed claim 4 as discussed above.

Support for the amendments to claims 9 and 22 is found, among other places, in the claims on file. Based on the foregoing, applicants respectfully request admittance of the amendments to claim 9, and consideration of claims 8 – 10, 17, 18 and 22.

Claims 8 – 10, 16 and 49, Moehring and Sauer were discussed above.

Claims 8 – 10 are either directly or indirectly dependent on claim 49.

Applicants have shown above that Moehring and Sauer do not disclose the packaging restraint recited in Claim 49 on which claims 8 – 10 are dependent. Maurice does not cure the defects of Moehring and Sauer. More particularly, claim 49 relates to a packaging restraint, including, among other things, an abrasive resistant plastic member having a first leg joined to a second leg at a vertex to provide the member with a generally L-shaped cross sectional configuration, the member having an inner surface and an outer surface, the inner surface of the member designated to be in facing relationship to articles to be restrained. A layer of a compressible resilient material is secured to the inner surface of the member at the vertex and extends from the vertex toward the end of the first leg and from the vertex toward the end of the second leg. An attachment is provided on the outer surface of the member. As discussed

above, Moehring/Sauer combination discloses a pad having a linear runner on the outer surface of the pad; Moehring/Sauer combination does not disclosure an L-shaped member having a compressible resilient layer on the inner surface of the L-shaped member.

Combining the foam pad of Maurice with Moehring/Sauer combination would provide restraint having a foam pad having raised portions 52 and 53, and a linear runner 51 secured to the pad and extending from the raised portion 52 toward the front of the sheet stack. The Moehring/Sauer/Maurice combination would not have an L-shaped member having a compressible resilient layer on the inner surface of the L-shaped member as recited in applicants' claim 49.

Claims 17 and 18 are dependent on claim 16. The argument put forth to patentably distinguish claim 49 over Moehring, Sauer and Maurice is applicable, among others, to patentably distinguish claims 16 – 18 over Moehring, Sauer and Maurice.

Claim 22 relates to a restraint for securing a plurality of articles, the restraint includes, among other things, a unitary laminated L-shaped member having, among other things, an inner layer having a first end and an opposite second end, and a major surface, the inner layer comprising foamed polyethylene formed under a pressure of 3 pounds to 9 pounds per square inch; an outer layer having a major surface defined as a first major surface and an opposite major surface defined as a second major surface, and a first end and an opposite second end, the major surface of the inner layer bonded with the first major surface of the outer layer with the first ends of the inner and outer layers aligned with one another and the second ends of the inner and outer layers aligned with one another, the outer layer comprising polyurethane and having a hardness greater than that of the inner layer; and the second major surface of the outer layer formed to have at least one attachment member having a slot.

The argument put forth to patentably distinguish claim 49 over Moehring, Sauer and Maurice is applicable, among others, to patentably distinguish claim 22 over Moehring, Sauer and Maurice.

Based on the foregoing, applicants respectfully request withdrawal of the rejection of Claims 8 – 10, 17, 18 and 22 under 35 U.S.C. 103(a) as being unpatentable over Moehring in view of Sauer and further in view of Maurice.

Based on the foregoing, applicants respectfully request allowance of claims 7 – 13, 15 – 20, 22 – 25, 29, 30, 39, 40 and 49.

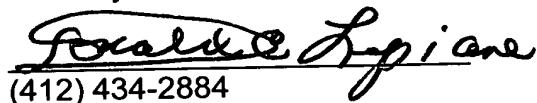
Applicants by this amendment in addition to adding new claim 49 discussed above, have added new claims 50 – 53. Claim 50 is dependent on claim 49 and recites, among other things, that the layer of compressible material extends to the end of the first leg and to the end of the second leg. Claim 51 dependent on claim 16 and claim 53 dependent on claim 23 each recite, among other things, that the attachment member has side walls and a member joining the sidewalls to provide a passageway to receive banding to bias the restraint against the glass sheets and to limit lateral movement of the banding. Claim 52 is dependent on claim 22 and includes, among other things, that the attachment member has sidewalls and a member joining the sidewalls to provide the slot.

Support for new claims 50 – 53 is found, among other places, in the drawing and in the claims on file. The argument put forth above to patentably distinguish the claims on file over the references is applicable, among others, to patentably distinguish claims 50 – 53 over similar art. Based on the foregoing, applicants respectfully request admittance, consideration and allowance of claims 50 – 53.

This amendment represents a sincere effort to place the application in condition for allowance. In the event issues remain, the Examiner is invited to call the undersigned to discuss those issues before further action is taken on the case.

Respectfully submitted,

DONALD C. LEPIANE
Registration No. 25,996
Attorney of Record


(412) 434-2884

Pittsburgh, Pennsylvania
July 13, 2004